

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR-2003-0196; FRL-]

RIN:2060-AK73

**National Emission Standards for Hazardous Air Pollutants
for Stationary Combustion Turbines**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; stay.

SUMMARY: The EPA is staying the effectiveness of two subcategories of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for stationary combustion turbines: lean premix gas-fired turbines and diffusion flame gas-fired turbines. Pending the outcome of EPA's proposal to delete these subcategories from the source category list (68 FR 18338, April 7, 2004), EPA is staying the effectiveness of the emissions and operating limitations in the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This action is necessary to avoid wasteful and unwarranted expenditures on installation of emission controls which will not be required if the subcategories are delisted.

DATES: The final rule is effective on [INSERT DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR-2003-0196. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B-102, 1301 Constitution Avenue, NW, Washington, DC 10460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202)566-1744, and the telephone number for the Air Docket is (202)566-1742.

FOR FURTHER INFORMATION CONTACT: Ms. Kelly Rimer, Office of Air Quality Planning and Standards, Emission Standards Division, C404-01, Environmental Protection Agency, Research Triangle Park, NC 27709; telephone number: (919) 541-2962; fax number: 919-541-0840; e-mail address: rimer.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the regulation.	4911 4922 1311 1321 4931	2211 486210 211111 211112 221	Electric power generation, transmission, or distribution Natural gas transmission Crude petroleum and natural gas production Natural gas liquids producers Electric and other services combined

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is affected by this action, you should examine the applicability criteria in §63.6085 of the final rule and the subcategory definitions in §63.6090. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by 60 days from publication in the Federal Register. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable

specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

I. Summary of Final Rule

EPA is issuing a final rule to stay the effectiveness of the emission standards for new sources in two subcategories of the NESHAP for stationary combustion turbines. The effect of this stay is to suspend the obligation of sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories to comply with the emissions limitations and operating limitations set forth in 40 CFR part 63, subpart YYYY. EPA is codifying this stay by amending the text of 40 CFR 63.6095 as set forth below.

Under this stay, new sources in the in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories, sources constructed or reconstructed after January 14, 2003, are temporarily relieved of the obligation to apply pollution controls and to comply with associated operating, monitoring, and reporting requirements. However, such sources must continue to submit Initial Notifications pursuant to 40 CFR 63.6145.

The final stay shall take effect immediately upon publication in the Federal Register, but only during the pendency of a separate rulemaking to delist the subcategories. It is not our intention by staying the effectiveness of the standards to change the definition of new sources within these subcategories or to alter the status of any individual source. If the subcategories are not ultimately delisted, the stay will be lifted, and all sources in the subcategories constructed or reconstructed after January 14, 2003 will then be subject to the final standards. The sources will then be given the same time to make the requisite demonstration of compliance they would have had if there had been no stay.

II. Background

The final MACT standards for stationary combustion turbines were published on March 5, 2004 (69 FR 10512). These standards, codified at 40 CFR part 63, subpart YYYY, define the subcategories for the Stationary Combustion Turbines source category.

On April 7, 2004, EPA proposed a rule to amend the list of categories of sources that was developed pursuant to Clean Air Act (CAA) section 112(c)(1)(69 FR 18327). EPA proposed to delete four subcategories from the Stationary Combustion Turbines source category. The subcategories

proposed for delisting, as defined in 40 CFR 63.6175, are:

(1) lean premix gas-fired stationary combustion turbines (also referred to herein as "lean premix gas-fired turbines"), (2) diffusion flame gas-fired stationary combustion turbines (also referred to herein as "diffusion flame gas-fired turbines"), (3) emergency stationary combustion turbines, and 4) stationary combustion turbines located on the North Slope of Alaska.

The proposed rule to amend the source category list was issued in part to respond to a petition submitted by the Gas Turbine Association (GTA) and in part upon the Administrator's own motion. Petitions to remove a source category from the source category list are permitted under section 112(c)(9) of the CAA. The proposed rule to delete the four subcategories is based on an initial determination by EPA that the subcategories satisfy the substantive criteria for deletion set forth in section 112(c)(9)(B). The proposed rule to delete the subcategories contains a detailed description of the technical basis for the initial determination.

At the same time that EPA proposed to delist the four combustion turbines subcategories, we also proposed a companion action to stay the effectiveness of the standards in the lean premix gas-fired and diffusion flame-

subcategories (69 FR 18338, April 7, 2004).

III. Basis for Stay

Although EPA proposed to delete from the source category list four subcategories established by the final MACT standards for stationary combustion turbines, CAA section 112(d)(10) provides that the standards as promulgated for the four subcategories take effect upon publication of the standards. Without a stay, all turbines in the lean premix gas-fired turbine and the diffusion flame gas-fired turbine subcategories which were constructed or reconstructed after January 14, 2003, would have been required to comply immediately with the emission standards for new sources. This would have caused some sources in the two subcategories to make immediate expenditures on installation and testing of emission controls, even though such controls will not be required if we issue a final rule to delete these subcategories.

In view of our initial determination that the statutory criteria for delisting have been met for all sources in the four subcategories, we consider it inappropriate and contrary to statutory intent to mandate such expenditures until a final determination has been made whether or not these subcategories should be delisted. Such expenditures would be wasteful and unwarranted if we take

final action to delist these subcategories. Moreover, if we take final action to delist the subcategories, sources constructed or reconstructed while the rulemaking to delist is pending would bear a regulatory burden not placed on identical sources constructed or reconstructed thereafter. Accordingly, we are issuing this stay to the effectiveness of the emission standards for new sources for the lean premix gas-fired turbine and diffusion flame gas-fired turbine subcategories during the pendency of the rulemaking to delete these subcategories.

We are mindful that there would be no need to stay the effectiveness of the standards for new sources in the two subcategories if a rulemaking to delist the affected sources had been completed before promulgation of the final MACT standards for combustion turbines. However, we note that the GTA petition was not submitted until quite late in the regulatory process. Moreover, we generally do not make a definite determination concerning the characteristics of subcategories until promulgation of final MACT standards. In these circumstances, we do not believe it would be fair to make certain affected sources bear the burden of a delay in our determination that a subcategory meets the statutory criteria for delisting.

The final stay is consistent with the precedents we

have established in similar circumstances in the past. In 1991, we issued a final rule staying the effective date of the National Emission Standards for Radionuclear Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H (40 CFR part 61, subparts H and I) for commercial nuclear power reactors during the pendency of another rulemaking to rescind the standards for those facilities (56 FR 37158, August 5, 1991). The rescission was authorized by section 112(d)(9) of the CAA (the "Simpson amendment"), which provides that we may decline to regulate Nuclear Regulatory Commission (NRC) licensees under CAA section 112 if the Administrator determines that the regulatory program established by the NRC for a category or subcategory provides an ample margin of safety to protect the public health. We had made an initial determination that the NRC program for commercial nuclear power reactors met this test, and we reasoned that "it would frustrate the evident purpose of Section 112(d)(9) if EPA were to permit Subpart I to take effect for this subcategory during the pendency of the rulemaking on rescission" (56 FR 37159). That action was not challenged.

In 1995, we acted to provide another type of interim relief during a delisting rulemaking. We suspended the

listing of caprolactam during a rulemaking to delete caprolactam from the list of hazardous air pollutants established by CAA section 112(b)(1) for purposes of determining the applicability of title V permitting requirements (60 FR 081, September 18, 1995). We based that action on our determination that "retention, during the rulemaking to delist caprolactam, of permit application requirements which will no longer exist after the delisting process has been completed would result in unnecessary private and public expenditures on preparation, submission, and processing of such applications, and would yield no environmental benefits" (60 FR 084-85). That interim relief action also was not challenged.

IV. Summary of Comments and EPA Responses

The EPA received four comments on the proposed stay and all commenters supported the proposed EPA action; we received no comments opposing the stay.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant

regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that the final action constitutes a "significant regulatory action" because it may raise novel policy issues and is therefore subject to OMB review. Changes made in response to OMB suggestions or recommendations are documented in the public record (see ADDRESSES section of this preamble).

B. Paperwork Reduction Act

This action does not impose an information collection

burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The final action stays the effectiveness of the combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories until a conclusion is reached regarding deletion of these subcategories. Therefore, this rule eliminates the need for information collection for regulatory compliance purposes under the CAA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently

valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For the purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business that meets the definitions for small business based on the Small Business Association (SBA) size standards which, for this final action, can include manufacturing (NAICS 3999-03) and air transportation (NAICS 4522-98 and 4512-98) operations that employ less than 1,000 people and engineering services operations (NAICS 8711-98) that earn less than \$20 million annually; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, EPA has concluded that this final action will not have a significant economic impact on a

substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the final rule on small entities." (5 U.S.C. 603 and 604). Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The final rule stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. This will suspend the requirements to apply pollution controls and associated operating, monitoring, and reporting requirements. These requirements will be permanently lifted if EPA ultimately removes the four source categories from the Stationary Combustion Turbines source category, and temporarily lifted if EPA does not ultimately delist the subcategories. We have, therefore, concluded that today's final rule will relieve

regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 1044, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements

that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates for State, local, or tribal governments or the private sector. The final rule imposes no enforceable duty on any State, local or tribal governments or the private sector. In any event, EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The final rule relieves a regulatory requirement.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the final regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the final regulation.

Today's action stays the effectiveness of the

stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. It does not impose any additional requirements on the States and does not affect the balance of power between the States and the Federal government. Thus, the requirements of section 6 of Executive Order 13132 do not apply to the final rule.

F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. The final action stays the effectiveness of the stationary combustion turbines NESHAP for new sources in the lean premix gas-fired turbines and diffusion flame gas-fired turbines subcategories. Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997)

applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this action is not based on health or safety risks. Thus, Executive Order 13045 does not apply to the final rule.

H. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or

Use" (66 FR 28355, May 22, 2001), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as "significant energy actions." The final rule is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 112(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) 915 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers

(SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards. The final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing today's final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on [INSERT DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

**Subpart YYYY – National Emissions Standards for Hazardous
Air Pollutants for Stationary Combustion Turbines**

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List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control,
Hazardous substances, Reporting and recordkeeping
requirements.

Dated

Michael O. Leavitt
Administrator

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63 – [AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart YYYY - National Emissions Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

2. Section 63.6095 is amended by revising paragraph (a) and by adding paragraph (d) as follows:

§63.6095 When do I have to comply with this subpart?

(a) Affected sources. (1) If you start up a new or reconstructed stationary combustion turbine which is a lean premix oil-fired stationary combustion turbine or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart on or before March 5, 2004, you must comply with the emissions limitations and operating limitations in this subpart no later than March 5, 2004.

(2) If you start up a new or reconstructed stationary combustion turbine which is a lean premix oil-fired stationary combustion turbine or a diffusion flame oil-fired stationary combustion turbine as defined by this subpart after March 5, 2004, you must comply with the emissions

limitations and operating limitations in this subpart upon startup of your affected source.

(b) * * *

(d) Stay of standards for gas-fired subcategories.

If you start up a new or reconstructed stationary combustion turbine that is a lean premix gas-fired stationary combustion turbine or diffusion flame gas-fired stationary combustion turbine as defined by this subpart, you must comply with the Initial Notification requirements set forth in §63.6145 but need not comply with any other requirement of this subpart until such time as EPA finalizes its proposal (69 FR 18327, April 7, 2004) regarding the delisting of these subcategories.

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